



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the application of: SCHMIDT, Brian K.

Application No: 09/765,886

Filed: January 18, 2001

For: Method And Apparatus For Aggregate  
Resource Management of Active  
Computing Environments

Group Art Unit: 2155

Examiner: Benjamin R. Bruckart

Atty. Docket No: SUNMP586

Date: May 25, 2006

# CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 25, 2005.

**Signed:**

  
Sylvia Castillo

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop: AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Final Office Action of February 27, 2006, Applicant respectfully requests a pre-appeal review of the outstanding rejections in accordance with the Pre-Appeal Brief Conference Pilot Program announced on July 12, 2005 (1296 OG 67) which was extended on February 7, 2006 (1303 OG 21). In accordance with these procedures, Applicant respectfully submits that the present Application should be allowed for the reasons stated in the Remarks, which begin on the following page.

## REMARKS

This Request is submitted in response to the Final Office Action of February 27, 2006 (hereinafter "the Office Action"). All references herein to the claims, except as noted, will be made with reference to the claim list provided in the Amendment submitted December 27, 2005. References to line numbers in the Office Action, except as noted, will count every printed line, except the page header, but including section headings. If there is any confusion or questions regarding any aspect of this Request, the Examiner and other officials reviewing this Request are invited to contact the undersigned.

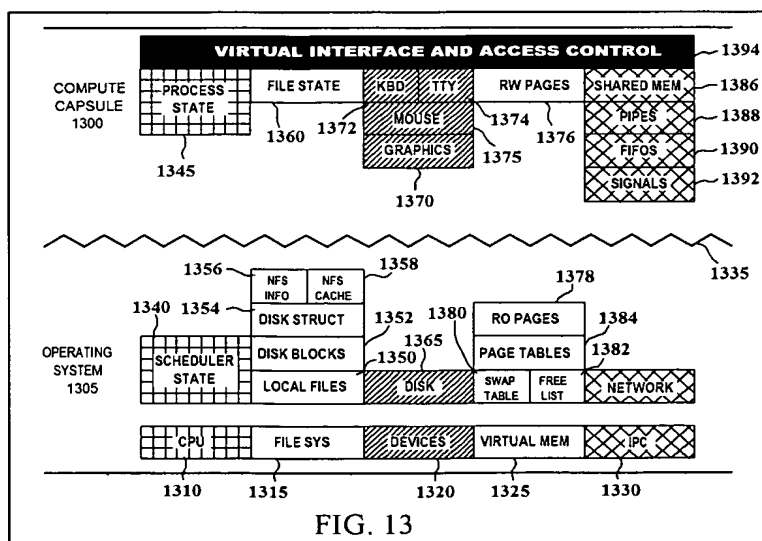
For the purposes of this Request, only the primary arguments directed to the independent claims are presented herein. Additional arguments, e.g., directed to the subject matter of the dependent claims, may be presented if and when the case proceeds to Appeal.

### Status

Claims 1-6, 8-13, and 15-20 are pending in the present Application. Independent claims 1, 8, and 15 stand rejected under 35 U.S.C. § 102(e) for being anticipated by U.S. Patent 6,247,109 issued to Kleinsorge et al. (hereinafter, "Kleinsorge").

### Background

Each independent claim sets forth a feature involving partitioning an operating system. On August 15, 2005, an Amendment was submitted that incorporated subject matter from related Application 09/764,771, which was incorporated by reference into the present Application. This portion of the specification, including Figure 13 reproduced to the right, contains an example of a partitioned operation system. In this case, the operating system is divided into two parts by line 1335, with some parts of the operating system state placed within the compute capsule, and some parts left



outside of the compute capsule. A compute capsule is simply an object or container that contains various elements of the active computing environment, as described in more detail in the additions to the specification made by the August 15, 2005 Amendment.

***Independent Claim 1***

Applicant respectfully submits that Kleinsorge, the primary reference relied upon by the Examiner in the outstanding Office Action, fails to describe each and every feature set forth in Claim 1, and that claim 1 is therefore not anticipated by Kleinsorge. For example, claim 1 sets forth:

partitioning an operating system so that host-dependant and personalized elements of the active computing environment are moved into the compute capsule while shared resources and a state necessary to manage them are excluded from the compute capsule

(claim 1, lines 5-8).

The Office Action appears to confuse the terms “operating system” and “processor.” Specifically, the Office Action suggests that the phrase “partitioning an operating system” reads on a partitioned multi-processor computer having a plurality of processors wherein each partition contains at least one processor and runs an instance of an operating system (Kleinsorge col. 4, lines 47-54).

“Partitioning an operating system” distinguishes claim 1 from Kleinsorge because Kleinsorge does not show partitioning an operating system, but instead shows partitioning a multi-processor computer.

Applicant *agrees* with the Examiner’s definition of “partitioning,” which is given on page 5, lines 15-16 of the Office Action. In that definition, a “partition” is defined as “*the act or process of dividing something into parts.*” Thus, the claim limitation reading, “partitioning an operating system” means *dividing an operating system into parts*. Kleinsorge does not disclose or suggest partitioning an operating system as so defined. Rather, Kleinsorge discloses partitioning a multi-processor computer so that each partition contains at least one processor and runs *a separate instance of the operating system* (col. 4, lines 47-54). As stated by Kleinsorge, “[t]he execution environment for a *single copy of an operating system* . . . is called a ‘partition’ 202, and the executing operating system 208 in partition 202 is called ‘instance.’” A multi-processor computer is not the same thing as an operating system. Therefore, the phrase, “partitioning an operating system” does not read on the partitioned multi-processor computer of Kleinsorge. Furthermore, since each partition runs a

separate *instance* of the operating system, the operating system is kept whole, is *not* divided, and is therefore *not partitioned*. A whole, undivided operating system is therefore not a partitioned operating system as the term, “partitioned” is defined in the Office Action.

Applicant respectfully submits that claim 1 and claims depending therefrom should be allowed for at least the reasons described above.

***Independent Claim 8***

While claim 8 does not use the word, “partitioning” it does set forth separating elements of an operating system by placing certain elements within a compute capsule. Specifically, claim 8 states, “the compute capsule further comprising host-dependent and personalized elements of an operating system, wherein shared resources and a state necessary to manage them are excluded from the compute capsule. . . .” As with claim 1, the Office Action appears to confuse “operating system” with “processor” or hardware. In response, Applicant wishes to emphasize that, by Kleinsorge’s own teachings, “The execution environment for a single copy of an operating system, such as copy 208 is called a ‘partition’ 202, and the executing operating system 208 in partition 202 is called ‘instance.’” Since an operating system is not a multi-processor computer, or a partition of such a computer, and since Kleinsorge teaches instantiating a single, complete, whole, undivided operating system in each partition, Kleinsorge cannot be said to provide a compute capsule “comprising host-dependent and personalized elements of an operating system, wherein shared resources and a state necessary to manage them are excluded from the compute capsule.”

Furthermore, it is noted that the Office Action equates compute capsules to the partitions of Kleinsorge (see Office Action, page 5, lines 8-9: “Compute capsules are partitions . . .”). Since claim 8 states, “wherein shared resources and a state necessary to manage them are ***excluded*** from the compute capsule” (line 6-7) (emphasis added), that would mean that Kleinsorge’s partitions must exclude shared resources and a state necessary to manage them from the partition in order to anticipate claim 8. However, Kleinsorge clearly states, “[e]ach of the partitions has access to its own physical resources plus resources designated as shared” (col. 4, lines 50-52). Applicant respectfully submits that it is *not possible* for the partition taught by Kleinsorge to access shared resources *while at the same time excluding the state necessary to manage the shared resources from the partition*. Applicant therefore respectfully submits that Kleinsorge does not exclude the state necessary

to manage shared resources, and therefore that the partitions of Kleinsorge do not read on the claimed compute capsule as asserted in the Office Action.

For at least the above-stated reasons, Applicant respectfully asserts that claim 8 and claims depending therefrom should be allowed.

***Independent claim 15***

Claim 15 sets forth "partitioning an operating system" in a manner similar to that of claim 1, discussed above. Therefore, claim 15 and claims depending therefrom should be allowed for at least the same reasons discussed above with respect to claim 1.

In view of the foregoing, the Applicant respectfully submits that all of the pending claims are in condition for allowance. The Applicant kindly requests that the Office withdraw the rejections of claims 1-6, 8-13, and 15-20, and issue a Notice of Allowance. If the Office has any questions regarding the present Request or would like to discuss the invention in more detail, the undersigned can be reached at (408) 774-6933. If any additional fees are due in connection with filing this Request, the Commissioner is authorized to charge Deposit Account No. 50-0805 (Order No. SUNMP586). Enclosed herewith is the associated Notice of Appeal and Return Receipt Postcard.

Respectfully submitted,  
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